

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

REGION 2

700 HEINZ AVE., SUITE 200
BERKELEY, CA 94710-2737

December 28, 1993



CERTIFIED MAIL

Ms. Jane Burns, Environmental Manager
Evergreen Oil, Inc.
6880 Smith Avenue
Newark, California 94560

EPA ID #CAD980887418

Dear Ms. Burns:

REPORT OF VIOLATIONS

On September 16, 17, and November 4, 1993, the Department of Toxic Substances Control (Department) conducted an inspection of Evergreen Oil Incorporated (EOI) located in Newark, California. As a result of this inspection, the following violations of hazardous waste statutes, regulations and the facility hazardous waste permit were observed:

VIOLATION:

1. Health and Safety Code (HSC) sections 25201 and 25250.4

EOI violated HSC, sections 25201 and 25250.4 on a date unknown prior to September 16, 1993, in that EOI stored and treated a federal RCRA hazardous waste without authorization.

EOI has received and treated/re-refined used oil containing more than 1,000 ppm total halogen, which is presumed to be a federal RCRA hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of 40 CFR part 261. EOI's hazardous waste facility permit only allows EOI to treat non-RCRA used lubricating oil.

On September 16, 1993, EOI representatives stated that EOI re-refines used oil containing more than 1,000 ppm total halogens. EOI's operating records shows that they accept and re-refine used oil containing more than 1,000 ppm halogens.

2. Hazardous Waste Facility Permit (Permit), Section II, F, 2 (Operation Plan), Section II, G, 8, b (Transfer Station), and III, B (Waste Prohibited).



EOI has violated its Permit, Section II, F. 2 (Operation Plan), Section II, G, 8, b (Transfer Station), and III.B (Waste Prohibited), in that, on a date unknown prior to September 16, 1993, EOI received, stored and treated hazardous waste not specified in their operation plan and permit:

- A. EOI's Operation Plan specifies that the distillation of used oil is the only treatment process employed by EOI (Operation Plan, Section VI, C - page 11 of 15). However, EOI has also employed blending processes, blending used oil with a distillate fraction from the re-refinery in order to meet fuel oil specifications.

The process is not specified in the Operation Plan.

- B. EOI's Operation Plan specifies that EOI can handle used oil containing up to 2500 ppm of total chlorine. EOI's Environmental Manager stated that EOI collected waste oil with greater than 2500 ppm chlorine (hot oil) in bobtail trucks and transported to the EOI Newark facility, where it was pumped into a tanker trailer for storage prior to shipment to an off-site incinerator. According to EOI logs the hot oil is shipped from EOI off-site on a regular basis, usually every two weeks.

The Operations Manager stated that EOI had blended used oil with hot oil to increase the BTU value prior to the shipment to the off-site incinerator.

The transfer of hot oil from bobtail truck to tanker trailer and blending of used oil to increase BTU value are not allowed in the current Permit.

- C. EOI's Operation Plan specifies that EOI can handle used oil with water content of 0-15%. EOI representatives stated that EOI received oily waste water from generators and pumped into its tank and treated by gravity separation. After separation, the water was shipped to an off-site facility. EOI accepted oily waste water under California waste codes, 221 and 134.

The storing and physical separation of oily water in a tank are not allowed in the current permit.

3. Health and Safety Code (HSC), section 25250.19 (a).

EOI violated HSC, section 25250.19 (a), in that on or about September 16, 17, and November 4, 1993, EOI failed to test all recycled oil prior to transportation from the facility, pursuant to applicable methods in EPA SW846 or a method

approved by the Department to ensure that it was in compliance with the standards specified in section 25250.1 (c) of the HSC. On September 16, 1993, the Laboratory Manager stated that EOI did not analyze each product shipment for arsenic and flash point of the recycled oil loads. EOI was using prior knowledge for these two required parameters.

Furthermore, the lab results indicate that EOI's laboratory analysis of the recycled oil loads for lead, cadmium, chromium, PCB, and total chlorine is done on a composite sample. On September 16, 1993, the EOI Laboratory Manager stated that the composite sample consists of one sample collected from each of the two tanks (Tanks 505 and 507) at a ratio that will meet the recycled oil standards. The fuel oil from Tanks 505 and 507 is then pumped according to the desired ratio into the tanker truck for shipment.

On September 16, 17, and November 4, 1993, the signed recycled oil certifications which EOI sends with each load of recycled oil were observed. On September 16, 1993, the Laboratory Manager stated that the oil in each shipment was not tested for flash point and arsenic, two of the required parameters listed in HSC section 25250.1 (c).

4. HSC section 25189 (a).

EOI violated HSC, section 25189 (a) in that on a date unknown prior to September 16, 1993, EOI made false statements/representations in their recycled fuel oil certifications required under HSC, sections 25250.18 and 25250.19.

EOI does not test its recycled oil product for Arsenic and flash point, and yet the signed recycled oil certification states that the oil in each shipment has been tested and is in compliance with the applicable standards and requirements of Article 13, Chapter 6.5 of Division 20, HSC.

On September 16, 1993, the Laboratory Manager stated that EOI did not routinely analyze the product for two required parameters, Arsenic and flash point, but was using prior knowledge to make the determination that the product loads met the required standards.

5. Title 22, California Code of Regulations (Cal Code Regs.), section 66264.12 (b), EOI Permit, III, I. 2.

EOI violated Title 22, Cal Code Regs., section 66264.12 (b), and EOI Permit, section III, I. 2, in that on or about November 4, 1993, EOI received hazardous waste from off-site

generators without informing the generators in writing that EOI has the appropriate permit for and will accept the waste.

The Environmental Manager stated that it was not possible for EOI to send out written notices to the large number of generators from which EOI receives waste. EOI provided the Department with a sample invoice which has the type of notification that EOI does give to generators, but is not adequate for the requirement.

6. Title 22, Cal Code Regs., section, 66264.13 (b).

EOI violated Cal. Code Regs., section 66264.13 (b) in that on or about September 16, and 17, 1993, EOI failed to follow their written waste analysis plan for accepting waste ethylene glycol.

EOI was granted a variance to store and treat waste ethylene glycol. Liquid sample number EV01, taken by the Department from Tank 652 (10,000 gallons capacity), showed 7.6% ethylene glycol. EOI has no documentation that waste analysis has been done for any incoming ethylene glycol waste.

7. Title 22, Cal Code Regs., section 66264.15 (d) and EOI Operation Plan section VIII, D, 2, c).

EOI violated Cal Code Regs., section 66264.15 (d) in that on June 4, 1993, June 28, 1993, and September 1, 1993, the inspection log did not include the date and nature of any repairs or other remedial actions, as specified in the Operations Plan, section VIII,d.2.c.

During the record review on September 16 and November 4, 1993, the incomplete inspection logs were observed. The inspection logs did not include an entry in the "Action Completed" column.

8. Title 22, Cal Code Regs., section 66266.130 (c)(3)

EOI violated Cal Code Regs., section 66266.130 (c)(3) in that on or about September 16, 1993, EOI did not label each container of oil filters with an initial date of accumulation.

On September 16, 1993, one 55-gallon drum containing used oil filters in the generator storage area, which lacked an initial date of accumulation was observed.

9. Title 22, Cal Code Regs., section 66266.130 (c)(4).

EOI violated Cal Code Regs., section 66266.130 (c) (4), in that on or about September 16, 1993, EOI had onsite one 55-gallon drum containing used oil filters, which had been stored longer than one year.

On September 16, 1993, one 55-gallon drum containing used oil filters with an initial date of accumulation marked as 4/7/92 was observed.

10. Title 22, Cal Code Regs., 66268.7 (a)(6).

EOI violated Cal Code Regs., section 66268.7 (a)(6) in that on or about September 17 1993, EOI failed to retain onsite a copy of notifications for the restricted waste sent offsite on manifest number 90136402.

During the record review, it was observed that EOI did not retain a notification for the restricted waste, used oil containing PCB, sent offsite on manifest number 90136402.

11. Title 22, Cal Code Regs., Section 66268.7 (a)(3)(E).

EOI violated Cal Code Regs., Section 66268.7 (a)(3)(E) in that on November 30, 1992, EOI failed to include the date that the waste is subject to prohibitions from land disposal in their notification for the restricted waste sent offsite on manifest number 90612112.

During the record review, a notification for a shipment of non-RCRA hazardous waste which lacked the expiration date for a restricted waste subject to a variance was observed.

Upon receipt of this report, Evergreen Oil Incorporated must correct all deficiencies noted in this Report of Violations (ROV) and submit to the Department written documentation demonstrating that all violations have been corrected.

The Department may schedule a reinspection of Evergreen Oil Incorporated verify compliance.

The issuance of this ROV does not preclude the Department from taking administrative, civil, or criminal action as a result of the violations noted herein.

The Department took photographs of your facility during its inspection. These photographs are subject to public disclosure under the Public Records Act (Gov. Code § 6250 et seq.). Pursuant to Health and Safety Code, Section 25185 (d), you may request a copy of any photograph of your facility (or you may

review the file copy) in order to determine whether trade secret information or facility security would be revealed by the photograph. "Trade secret" is defined in Health and Safety Code section 25173 to include process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, or which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. Trade secret protection is explained in *Uribe v. Howie* (1971) 19 Cal. App. 3d 194.

If you wish to review the photographs in the Department's file, please notify Natalie Marcanio within 10 days of the date of this letter to arrange an appointment. The Department will hold the photographs confidential until this 10-day period expires. If you exercise your right to review the photographs, the Department will hold them confidential for an additional 10 days from the date of your review to allow you time to decide if you wish to assert the trade secret privilege.

If you wish to assert the trade secret privilege after you have reviewed the photographs, please provide specific answers to each of the following questions for each photograph:

1. To what extent is there knowledge of the information conveyed by the photograph outside your business?
2. To what extent is there knowledge of the information conveyed by the photograph by employees and others in your business?
3. To what extent have measures been taken to guard the secrecy of the information?
4. Is the information valuable to competitors? If so, why?
5. Has there been substantial monetary expenditure in the development of the information?
6. Could the information be easily and properly acquired or duplicated by others?

The Department will review this information to determine if the photographs should be treated as trade secrets and notify you accordingly.

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If you have any questions regarding this report, please
contact Natalie Marcanio at (510) 540-3861.

Sincerely,

Natalie Marcanio

Natalie Marcanio
Hazardous Materials Specialist
Surveillance & Enforcement Branch

Wei-Wei Chui

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Unit Chief
Surveillance & Enforcement Branch

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cc: See next page

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